



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**



ARNOLD  
SCHWARZENEGGER  
GOVERNOR

For Meeting Date: May 14, 2009

**Agenda Item No. 6: Public Hearing: Issuance of an Order to Comply to Super Creek Quarry (formerly Painted Hills Mine), (CA Mine ID #91-33-0003), Whitewater Rock & Supply Company (Operator), Al Bankus (Agent), City of Desert Hot Springs, to Correct Violations of the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.) and the Approved Reclamation Plan.**

**INTRODUCTION:** The State Mining and Geology Board (SMGB) is the lead agency pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code Section 2710 et seq.) for all surface mine operations in the City of Desert Hot Springs. During conduct of a site inspection performed on November 27, 2007, several violations and corrective measures were identified. Such violations were deemed, in part, as substantial deviations from the approved reclamation plan. At its December 13, 2007, regular business meeting, the SMGB requested that an amended reclamation plan that adequately addressed long-outstanding issues be provided to the SMGB by January 31, 2008, and directed the Executive Officer to issue a Notice of Violation (NOV) should such submittal not be received. A Notice of Violation was issued by the Executive Officer on July 1, 2008. An Order to Comply was issued by the SMGB on September 11, 2008. The SMGB is considering upholding its Order to Comply.

**STATUTORY AND REGULATORY AUTHORITY:** In situations where a surface mine site does not have an adequate reclamation plan or financial assurance, PRC Section 2770(d) states:

*"The lead agency's review of reclamation plans submitted pursuant to subdivision (b) or of financial assurances pursuant to subdivision (c) is limited to whether the plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, but, in any event, the lead agency shall require that financial assurances for reclamation be sufficient to perform reclamation of lands remaining disturbed. Reclamation plans or financial assurances determined to substantially meet these requirements shall be approved by the lead agency for purposes of this chapter. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. The operator has 60 days to revise the plan or financial assurances to address identified deficiencies, at*



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*which time the revised plan or financial assurances shall be returned to the lead agency for review and approval...”*

PRC Section 2774.1(a) further states:

*“Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities.”*

Should site conditions prove that a site cannot be reclaimed in a manner consistent with its respective approved reclamation plan, California Code of Regulations (CCR) Section 3502(e) requires that:

*“An amended reclamation plan shall be filed if the lead agency determines, after an inspection, that the surface mining operation can no longer be reclaimed in accordance with its approved reclamation plan. Such amended plan shall incorporate current reclamation standards as described in Chapter 9 (commencing with Section 2710) and Title 14 of the California code of Regulations commencing with Section 3700.”*

## **BACKGROUND:**

**Description:** The Super Creek (formerly Painted Hills) Quarry is located in the City of Desert Hot Springs and has produced decorative rock, with sand as a by-product, since about 1954. The site is located approximately 3.5 miles north of the existing Whitewater Rock and Supply retail site, and is accessed by an existing BLM right-of-way, along the eastern margin of San Geronio Pass. The site is surrounded by land managed by the Bureau of Land Management (BLM), with access via a BLM access/haul road, which runs along the ridge immediately east of the south-flowing Whitewater River. The meandering and intermittent southerly-flowing Super Creek borders the toe of the east-southeast facing tailings.

Existing cut slopes are approximately 130 feet in maximum height and nearly vertical. Final configuration of slopes are to be northeast-to-east to southeast facing cut slopes,



approximately 150 feet in maximum height and as steep as 1H:1V. Existing pre-SMARA tailing slopes exist on the northeastern flank of the quarry, and immediately northeast of the access road to the quarry. Sheet 1 of 1 of the 1993 Revised Supplement to the Reclamation Plan denotes Post-SMARA, Present and Future Tailings areas. These tailing slopes are approximately 300 feet in height, and are inclined as steep as 1.7H:1V (31 degrees from the horizontal). Field measurements of tailings slope gradients at time of the October 29, 2008, inspection ranged from approximately 30 to 34 degrees. A remnant one- to three- foot high, approximately thirty foot wide, arcuate headscarp was also noted near the top of the existing pre-SMARA tailings slope just east of the eastern processing area.

Chronology of Activities: A summary of pertinent activities is provided below:

Date	Activity/Action
Pre-1975	Site operated by the Whitewater Rock and Supply Company for many years prior to 1975. Operations in the area commenced prior to 1954.
July 1978	Reclamation Plan submitted and subsequently approved. Area encompassed by the Reclamation Plan is triangular in shape and totals about 80 acres at an elevation between 2200 and 2500 feet above mean sea level.
July 1992	Supplement to 1978 Reclamation Plan (RP 108) submitted and subsequently approved.
September 1993	1992 Supplement to the 1978 Reclamation Plan was revised and subsequently approved. Continuing excavations occurred from elevations of about 2350 to 2220 feet above mean sea level.
April 4, 2004	NOV issued for failure to provide an adjusted financial assurance.
April 26, 2004	Super Creek Quarry Expansion – BLM Plan of Operations and Reclamation Plan submitted by operator, reviewed by SMGB and OMR staff and deemed inadequate, with comments forwarded to the operator.



January 19, 2005	NOV issued for inadequate revegetation program and erosion control resulting in encroachment onto adjacent land.
March 10, 2005	OTC not issued by SMGB since operator was going to take appropriate actions to address the January 19, 2005, NOV.
February 22, 2007	September 2006 revision of Super Creek Quarry Expansion – BLM Plan of Operations and Reclamation Plan, as submitted by operator, reviewed by SMGB and OMR staff and deemed inadequate, with comments forwarded to the operator.
July 1, 2008	NOV issued for inadequate revegetation program, soil erosion control measures, encroachment and slope instability.
Sept. 11, 2008	Order to Comply issued by SMGB.
November 2008	Super Creek Quarry Expansion, Bureau of Land Management (BLM) Plan of Operations and Amended Reclamation Plan No. 137, received by SMGB. Documents reviewed by SMGB and OMR staff deemed inadequate.
February 17, 2009	SMGB comment letter detailing outstanding issues identified in November 2008 documents forwarded to operator.

Compliance Issues: When the site was inspected by SMGB staff on November 27, 2007, three violations were noted at time of inspection:

- The revegetation program has not been maintained in a manner set forth in the approved 1992 Revised Supplement to the Reclamation Plan.
- A landslide headscarp noted near the top of the eastern tailings slope indicated potential ongoing instability.



- Soil erosion control measures had not been fully implemented at the toe of the tailings slopes.

The following corrective measures were offered:

- Further efforts were required to implement and maintain the revegetation test plot program in accordance with the approved Reclamation Plan, or revise such program.
- Tailings slopes should be reviewed and periodically monitored by a licensed geotechnical engineer or certified engineering geologist, and corrective measures implemented as appropriate.
- Continued soil erosion control efforts should be implemented on the tailings slopes, such as additional rip-rap placement and slope contouring.

The following recommendation was also offered:

- The financial assurance amount should be reviewed and updated following SMGB and OMR review and comment upon the forthcoming revised amended reclamation plan for the Super Creek Quarry expansion.

Amended Reclamation Plan Status: During its December 13, 2007, regular business meeting, the SMGB requested that an amended reclamation plan that adequately addresses the issues noted above, and in earlier SMGB correspondence dated April 25, 2006, and February 22, 2007, be provided to the SMGB by January 31, 2008. The 2007 SMARA Mine Inspection report also recommended that the financial assurance amount be re-evaluated and adjusted “...following SMGB and OMR review and comment upon the forthcoming revised amended reclamation plan for the Super Creek Quarry expansion.”

On March 10, 2008, the operator provided an Addendum to the 1992 Reclamation Plan dated February 2008, in lieu of providing an amended reclamation plan as requested. Upon review by OMR and SMGB staff, the submittal was deemed grossly inadequate, and a reiteration of outstanding issues and comments were provided to the operator in correspondence dated May 13, 2008.

On July 1, 2008, the operator was sent a Notice of Violation via certified mail, which was received by the operator on July 7, 2008. According to that Notice, the operator was to provide to the SMGB office a draft amended reclamation plan that adequately addressed the



violations, or provide documentation that the physical conditions at the site had been corrected.

At its September 11, 2008, regular business meeting, the SMGB moved to issue an Order to Comply pursuant to PRC Section 2774.1(a), and to provide for a hearing before the SMGB concerning the alleged violation pursuant to PRC Section 2774.1(b).

Amended Reclamation Plan Submittal: The Super Creek Quarry Expansion, Bureau of Land Management (BLM) Plan of Operations and Amended Reclamation Plan No. 137, dated November 2008, was received and subsequently reviewed by Department of Conservation Office of Mine Reclamation (OMR), and SMGB staff. This plan incorporated the Operator's objective to expand surface mining operations which would bring the total project disturbance area to 83.2 acres and the total area of the mine to 95.2 acres. The Operator estimates that approximately 50,000 tons of decorative rock will be removed annually for a period of 25 years. In addition to the expansion, the amended reclamation plan was intended to address violations identified by the SMGB.

The November 2008 submittal, upon review by OMR and SMGB staff, was deemed inadequate as documented in correspondence dated February 17, 2009. Issues and violations previously noted were not adequately addressed in the November 2008 submittal, and all violations previously issued by the SMGB remain in effect.

**EXECUTIVE OFFICER'S RECOMMENDATION:** The Executive Officer finds that the mine operator has not, to this date, taken timely actions to correct the cited violations, and provide an adequate amended reclamation plan to bring the existing approved reclamation plan and the surface mining operations into accord. The Executive Officer recommends that the SMGB uphold its Order to Comply issued on September 11, 2008 to Alan Bankus, owner and operator of the Super Creek Quarry.

**CONSIDERATIONS BEFORE THE SMGB:** Pursuant to PRC Section 2774.1(b), the SMGB shall conduct a public hearing to determine, based on the record before it, if the evidence before the SMGB substantially supported the basis for the Order to Comply at the time the Order was issued. Two options are before the SMGB.

If the SMGB finds that the evidence in the record supports the issuance of the order, the SMGB shall uphold the order and any effective date contained in the Order. If no effective date is contained in the order, then the Board shall set a date upon which the Order takes effect.

Or,



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If the SMGB finds that the evidence in the record does not substantially support the order, then the SMGB shall not uphold the order.

**SUGGESTED MOTION LANGUAGE:**

To uphold the Order to Comply:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board uphold its Order to Comply to Mr. Al Bankus, owner and operator of the Super Creek Quarry, CA Mine ID #91-33-0003, and direct the operator to provide the SMGB with an amended reclamation plan that adequately addresses violations issued by the Board while serving as the SMARA lead agency, and issues documented in Board's correspondence dated February 17, 2009, within 60 days from which this Order to Comply is upheld.*

To not uphold the Order to Comply:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board not uphold its Order to Comply to Mr. Al Bankus, owner and operator of the Super Creek Quarry, CA Mine ID #91-33-0003, but direct the operator to provide the SMGB with an amended reclamation plan that adequately addresses violations issued by the Board while serving as the SMARA lead agency, and issues documented in Board's correspondence dated February 17, 2009.*

Respectfully submitted:

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Stephen M. Testa  
Executive Officer



## **ORDER TO COMPLY PROCEEDINGS**

**FOR:**

**Super Creek Quarry  
California Mine ID #91-33-0003  
Whitewater Rock and Supply Company (Operator)  
Al Bankus (Agent)**

The purpose of this Hearing is to allow the Operator and the SMGB, when acting in the capacity of the Lead Agency issuing the Order, to hear arguments regarding the issuance by the SMGB of an Order to Comply. Pursuant to Public Resources Code Section 2774.1, Orders to Comply do not become effective until the SMGB has conducted a public hearing concerning the alleged violation(s).

Following the presentations, the SMGB will consider the issues before it and may ask questions of the participants.

**The Order of the Hearing will be as follows:**

1. Identification of the Record by the SMGB's Executive Officer;
2. Statements on Behalf of the Mine Operator;
3. Statements on Behalf of the SMGB as Lead Agency;
4. Statements on Behalf of the Public;
5. Rebuttal on Behalf of the Mine Operator;
6. Rebuttal on Behalf of the SMGB as Lead Agency;
7. Motion to close the public hearing.

Notwithstanding the above, the Chairman or the Chairman's designee for the purposes of conducting these procedures may, in the exercise of discretion, determine the order of these proceedings, and set time limits.



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**In the Matter of:**  
**SUPER CREEK QUARRY**  
California Mine ID No. 91-33-0003

**Notice of Violation:** Issued July 1, 2008.

**Order:** Order to Comply to Commence and Complete Corrective Actions issued on September 11, 2008.

**Past SMGB Actions on this Review:**

April 4, 2004	NOV issued for failure to provide an adjusted financial assurance.
April 26, 2004	Super Creek Quarry Expansion – BLM Plan of Operations and Reclamation Plan submitted by operator, reviewed by SMGB and OMR staff, with comments forwarded to the operator.
January 19, 2005	NOV issued for inadequate revegetation program and erosion control resulting in encroachment onto adjacent land.
March 10, 2005	OTC not issued by SMGB since operator was going to take appropriate actions to address the January 19, 2005, NOV.
February 22, 2007	September 2006 revision of Super Creek Quarry Expansion – BLM Plan of Operations and Reclamation Plan, as submitted by operator, reviewed by SMGB and OMR staff, with comments forwarded to the operator.
July 1, 2008	NOV issued for inadequate revegetation program, soil erosion control measures, encroachment and slope instability.
Sept. 11, 2008	Order to Comply issued by SMGB.
November 2008	Super Creek Quarry Expansion, Bureau of Land Management (BLM) Plan of Operations and



Amended Reclamation Plan No. 137, received by  
SMGB.

February 17, 2009 SMGB comment letter issued to operator.

**Considerations Before the SMGB:**

Public Resources Code Section 2774.1(a): The board when acting as lead agency may issue orders to comply with the Act:

Public Resources Code Section 2774.1(b): Any order of the board does not become effective until a public hearing is conducted by the board concerning the alleged violations.

Public Resources Code Section 671: The director shall have no power to amend or repeal any order, ruling, or directive of the board.

The SMGB is to determine the following:

- First:** Based on evidence presented, were the statements of violations in the SMGB's order substantially true and correct at the time of issuance of the Order.
- Second:** If the statements of violations contained in the Order were substantially true and correct at the time of issuance, the SMGB shall sustain the Order as issued and announce an Effective Date for the Order.
- Third:** If the statements of violations contained in the Order were NOT substantially true and correct at the time of issuance, the SMGB shall indicate specifically which allegations were incorrect, remand the order back to the SMGB for corrections, and shall not set an Effective Date.

